

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,837

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare finding that she was ineligible for assistance through the Home Heating Fuel Assistance program because her application was filed too late and she did not meet the criteria for a good cause exception.

FINDINGS OF FACT

1. The petitioner is a single parent who lives with her three minor children in a three bedroom apartment which is heated primarily with wood and electric heat as a back-up. She is required to pay for her own heat. She moved into this apartment on December 2, 1996 from an apartment where her heat was included. The petitioner is a part-time college student and lives on ANFC benefits.

2. The petitioner moved from her former apartment in a public housing project to her current housing because it was more spacious, in a "better neighborhood" and because her children could have pets there. She receives assistance with her current housing through a Section 8 certificate. Her lease was up on her prior apartment but the landlord was not asking her to move.

3. On December 9, 1996, the petitioner filed an application for fuel assistance with the Office of Home Heating Fuel Assistance. She was asked as part of the application to say why she was filing her application after September 30, 1996. The petitioner stated:

I was living in an apartment that included the heat in the rent, but I moved on the first of December into an apartment that I have to pay my own heat.

4. On January 28, 1997, the Department mailed the petitioner a notice denying her application for the following reasons:

You did not submit your application during the specified application period, August 15 through September 30. After December 31, no exceptions to the application period are allowed.

Subsequently, by two letters dated February 4 and 5, 1997, the Department corrected that notice to delete the last sentence above and to add in its stead, "and your circumstances do not meet the criteria

for an exception to this period." This correction apparently occurred due to a mistake as to the actual date of filing of the application. The Department agrees that the petitioner filed her application before December 31, 1996.

5. At the hearing, a supervisor for the Office of Home Heating Fuel explained that the petitioner's request had been reviewed to see whether there was "good cause" or some "compelling" reason for the petitioner's move. The Department concluded that a move to get a better apartment which created a new heating obligation was not a sufficient reason to allow an exception to the deadline. The supervisor explained that the Department was looking for some emergency reason for the move such as the existence of health hazards, increase in rent or loss of income to sustain an exception, not reasons such as better neighborhood, more space or accommodation of pets.

6. The petitioner agrees that she knew that the application deadline was September 30, 1996, but at that time she had no need for the heating fuel. She has been receiving assistance from the emergency fuel program, the crisis component of the heating program, and currently has all the wood she needs for this heating season. However, she was hopeful that she could receive more wood which she could keep in supply if she were found eligible for the regular program.

ORDER

The decision of the Department is affirmed.

REASONS

The home heating fuel assistance program adopted by the legislature last spring specifically requires the Department of Social Welfare to establish an annual period for accepting applications for assistance:

(a) In order to make a timely determination of benefit levels, there shall be an application period during which all beneficiaries shall apply for home heating fuel assistance for the ensuing heating season . . .

For the 1996-1997 heating season, the application period shall begin no later than August 15 and extend no longer than 47 calendar days.

(b) The secretary may accept applications after the application period has closed only in unanticipated circumstances or for good cause shown, such as loss of employment of the applicant.

33 V.S.A. § 2606

The Department adopted regulations pursuant to this statutory mandate establishing an application period as follows:

For the 1996-1997 heating season (from November 1, 1996 through March 1997), the application period will begin on August 15, 1996, and close on September 30, 1996. . . . Applicants must submit applications during the specified application period in order to have their eligibility determined for the Fuel Program for the ensuing heating season. Applications must be received by the last day of the

application period by the Office of Home Heating Fuel Assistance, or by any of the twelve Department of Social Welfare's District Offices; if mailed, the application must be postmarked no later than the last day of the application period.

W.A.M. § 2902.1

The regulations also provide for a late period for

filing applications under special circumstances:

Applications received after the close of the application period but no later than November 30, may be found eligible only under one of the circumstances listed in this section. For the 1996-1997 heating season only, the final submission date for an application under one of these circumstances is December 31, 1996.

a) Households that applied during the application period and were denied as a result of excess income and who have subsequently experienced a loss of income sufficient to meet the income requirements specified in Section 2904.

b) Households that have experienced the following change in circumstance since the close of the application period:

1) loss of 40 percent or more of the household's earned income due to the death, injury or illness of one or more of the household's earners; or

2) loss of 40 percent or more of the household's earned income due to involuntary lay-off or dismissal from employment through no fault of the employee.

c) Households that experienced one of the following catastrophic changes in circumstances during the application period:

1) death of a household member;

2) illness of such severity that the applicant was unable to direct his or her own affairs;

3) natural disaster such as fire, flood, or hurricane;

4) court-ordered or constructive eviction due to circumstances over which the applicant had no control. See G.A. 2602 for definition of constructive eviction;

5) any other equally compelling reason as determined by the Commissioner of the Department of Social Welfare or his or her designee.

d) For the 1996-1997 fuel season only, households that otherwise demonstrate good cause for failing to file within the application period as determined by the Commissioner of the Department of Social Welfare or his or her designee.

The existence of good cause under this section shall be subject to fair hearing review under Section 2910.

W.A.M. § 2902.2

The Department did review the petitioner's situation under the criteria listed in (c)(5) and (d) above. The supervisor indicated that the Department was looking for some kind of an emergency to make an exception under those criteria. They did not feel that the petitioner's move was such an emergent situation. The Department has the discretion to make such a decision and the decision can only be overturned by the Board if that decision has no reasonable basis, even if the Board would make a different decision. 3 V.S.A. 3091(d). It cannot be said here that the Department did not have a reasonable basis for refusing to find a compelling reason or other good cause in these circumstances. The petitioner's case is made even less compelling by the fact that she has received emergency fuel assistance which covers all her current heating needs. The decision of the Department is affirmed.

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